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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,694	01/18/2001	Piergiovanni Luciano	SIR004BUS/RF/vm	4696

466 7590 08/28/2002

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/761,694

Applicant(s)

LUCIANO ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on July 30, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-25 in Paper No. 7 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 3-7, 10-11, and 13-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Regarding claims 3 and 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
5. Claims 3, 8, 10, 15, and 20-21 recite "selected from the group comprising". It is not clear whether other materials can be used since "comprising" is an open phrase. It is suggested that "consisting" be substituted for "comprising".
6. Claim 14 recites "its". It is not clear what component "it" is.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 8-9, 14-15, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueda et al [Pat. No. 4,959,207].

Ueda et al teach a food tray (column 7, line 3) comprising a foam, thermoplastic sheet (column 5, line 33) impregnated with odor adsorbing material (column 5, line 15), apertures (column 6, line 43), the odor adsorbing material including activated carbon, zeolite, bentonite, diatomaceous earth, and clay (column 5, lines 35-41), the thermoplastic material including polystyrene (column 5, line 68), and the odor adsorbing material being present at 0.1-30% (column 5, line 44).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4, 10-11, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al as applied above, in view of JP 61120638.

Ueda et al teach the above mentioned components. Ueda et al do not teach an average particle size of 0.5-100  $\mu\text{m}$ . JP 61120638 teaches a food package comprising a foamed sheet with odor adsorbing particles having a size of 150  $\mu\text{m}$  or finer (page 1, claim 1;

page 5, line 4). It would have been obvious to one of ordinary skill in the art to incorporate the particle size of JP 61120638 into the invention of Ueda et al since both are directed to food packages, since Ueda et al simply does not recite the particle size, since odor adsorbing particles with a size of 150  $\mu\text{m}$ , or finer, were quite suitable for use in foamed sheets as shown by JP 61120638 (page 4, lines 1-10), and since JP 61120638 teaches that if particles larger than this are used, mixing properties are poor, package contents can be contaminated, and the adsorption function cannot be effectively exhibited (page 4, line 10-15).

11. Claims 5-7, 17-19, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al, in view of JP 61120638, as applied above, and further in view of JP 363150353A.

Ueda et al and JP 61120638 teach the above mentioned components. Ueda et al and JP 61120638 do not teach 1.5-4% aluminum oxide. JP 363150353A teaches a food tray comprising a foam sheet with aluminum oxide impregnated within it (page 2, line 10) in the range of 3-10% (page 2, line 14). It would have been obvious to one of ordinary skill in the art to incorporate the aluminum oxide of JP 363150353A into the invention of Ueda et al, in view of JP 61120638, since all are directed to food packages comprising foam sheets with odor adsorbing material, since Ueda et al already included alumina as an odor adsorbing material (column 5, line 37), and since aluminum oxide was a commonly used odor adsorbing material for food packages as shown by JP 363150353A.

12. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al as applied above, in view of EP 0849309A1.

Ueda et al teach the above mentioned components. Ueda et al do not teach surfactants. EP 0849309A1 teaches a food package comprising foam thermoplastic material impregnated with surfactants (column 3, lines 23-38). It would have been obvious to one of ordinary skill in the art to incorporate the surfactants of EP 0849309A1 into the invention of Ueda et al since both are directed to foam food trays, since Ueda et al included apertures as well as the use of other additives (column 6, line 44; column 5, lines 14-16), since food trays were commonly used to package wet or greasy materials, and since the surfactants of EP 0849309A1 helped absorb these fluids (column 3, lines 23-38) and thereby kept the tray looking presentable to the consumer (column 1, lines 3-17).

13. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al, in view of JP 61120638 and JP 363150353A, as applied to claim 21 above, and further in view of EP 0849309A1.

Ueda et al, JP 61120638, JP 363150353A, and EP 0849309A1 teach the above mentioned components. Ueda et al, JP 61120638, JP 363150353A, and EP 0849309A1 are combined for the above mentioned reasons and since all are directed to food packages comprising foam sheets impregnated with additives.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Parks [Pat. No. 5,693,385], Hoshino [Pat. No. 4,931,360], JP

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2000017096A, and Gustafson et al [Pat. No. 5,436,282] teach food packages with odor adsorbing qualities.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

A handwritten signature in black ink, appearing to read "Drew Becker", followed by a horizontal line extending to the right.

Drew Becker  
August 26, 2002